



Accountability Watch Committee (AWC)

जवाफदेहिता निगरानी समिति

24 November 2021

Mr. Duarte Pacheco
President
International Parliamentary Union (IPU)
Chem. du Pommier 5, 1218 Le Grand-Saconnex, Switzerland
and
José Manuel Albares Bueno
Minister of Foreign Affairs
Spain.
C/F
Mr. José María Ridao Domínguez
Ambassador to India and Nepal
Embassy of Spain
12, Prithviraj Road, New Delhi.

Subject: Planned Attendance of Speaker of Nepal's Parliament at the IPU Assembly and Application of Universal Jurisdiction

Dear President of the IPU and Minister of Foreign Affairs,

The Accountability Watch Committee (AWC), (a network of human rights defenders and victims of conflict of Nepal) human rights organizations and victims' Associations of Nepal are alarmed to learn that the tainted Speaker of Nepal's Parliament, Agni Sapkota, plans to attend the 143rd assembly of the IPU being held in Madrid, Spain, 26-30 November 2021. As a watchdog on human rights and accountability in post-conflict Nepal, we urgently request the IPU to withdraw the invitation to Mr. Sapkota, as a person against whom a police investigation for murder is pending. Similarly, we ask the Government of Spain to direct its immigration authorities not only to refuse Mr. Sapkota entry into the country but also to open an investigation under the principles of Universal Jurisdiction, given the continuing investigation in Nepal in relation to a international crimes committed during Nepal's conflict.

Agni Sapkota is alleged to have been involved in the April 2005 abduction, torture, disappearance, killing and illegal burial of Arjun Bahadur Lama, a civic leader from Dapcha township, Kavre District. At that time there was a civil conflict in Nepal (1996-2006) between the Communist Party of Nepal-Maoist (CPN-M), a non-state armed group, and state security forces. Agni Sapkota was a central committee member and leader of the CPN-M in Sindhupalchok District, neighbouring Kavre.

On 21 November 2006, the Maoists and government signed a peace agreement. The Maoists subsequently contested parliamentary (constituent assembly) elections in 2008 (and repeatedly since

then) and have either led or participated in numerous coalition governments. The party is a junior coalition partner in the current government, under Prime Minister Sher Bahadur Deuba of the Nepali Congress party.

Even as the police has had an active file on Mr. Sapkota, he has served as a cabinet minister after his party entered mainstream politics in 2006. He has been recently elevated to the post of Speaker of the House of Representatives.

Mr. Lama was abducted by the cadre of the CPN (Maoist) on 19 April 2005 and the evidence shows that he was marched through the surrounding villages before being tortured, killed and buried in a forest tract near Dapcha. The National Human Rights Commission has concluded in its own investigations that Mr. Lama was kept under the custody of the then rebel group, CPN-M, tortured and deliberately killed and ordered an investigation including exhumation of the body of Mr. Lama.

The Nepal Police was initially reluctant to register a First Information Report filed by the family of Mr. Lama seeking criminal investigation on the case, for fear of reprisals, but ultimately responded to a Supreme Court order and the FIR was filed on 11 August 2008. The arrest warrant was issued by the police but not executed, stating that he had absconded and could not be located. That is where the matter has rested till today, despite the applications of Purnimaya Lama, Mr. Lama's spouse, the conflict victim community, human rights groups and orders of the courts. Due to the allegations pending against him he has had visa applications rejected by the United States and Australia.

The reluctance of the police to act is explained by the fact that the political party leadership of Nepal has become complicit in promoting the political career of Mr. Sapkota, given his proximity to the Maoist chairman Pushpa Kamal Dahal ('Prachanda') and Mr. Dahal having developed a 'working relationship' with the heads of all significant political parties.

Despite the order of the Supreme Court requiring impartial and prompt investigation and an arrest warrant pending against him, investigations have not proceeded for more than a decade nor has he been arrested. Meanwhile, even as Mr. Sapkota's political career has progressed, as far as the Nepal Police administration is concerned, he still cannot be located.

Mr. Sapkota's appointment as Minister for Information and Communications was challenged in 2011 by the group of human rights defenders in the Supreme Court. The Court refrained from issuing an interim order for the suspension of the appointment, stating that there is no law on 'vetting' requiring suspension of alleged perpetrator, but it ordered the prosecutors to conduct an impartial investigation into the murder and *submit a progress report every 15 days to the Supreme Court* through the Attorney General's Office. The Court judgement further stated that it was a matter of his morality whether to remain in office or leave while allegations against him were pending.

Rather than conducting a thorough criminal investigation, on 27 July 2012, the Council of Minister headed by former Maoist rebel leader Baburam Bhattarai decided to shelve the FIR filed against Mr. Sapkota. On 22 November of the same year, Purnimaya Lama filed a writ demanding the decision be overturned. The Supreme Court on 26 November 2012 stayed the government's decision to shelve the

FIR requiring investigation on the case. As the Government continued to insist that all conflict era cases, including those involving human rights excess, should be handled by the transitional justice mechanisms including the Truth and Reconciliation Commission, in 2016, the Court decided to shift the case against Mr. Sapkota to the Constitutional Bench.

The travesty in terms of justice has continued as the hearing on the various cases against Mr. Sapkota (which have all now been brought under one heading in the Supreme Court) have been shifted continuously. Ms. Lama, living alone in a makeshift shack following the destruction of the house built by her husband in the April 2015 earthquake, continues to hope for justice in the murder of her husband. The next hearing of the Constitutional Bench on the murder case against Agni Prasad Sapkota is slated for 1 December 2021.

In 26 January 2020, when Sapkota was appointed as the Speaker of the Parliament. A writ was filed demanding Mr. Sapkota's arrest, investigation into the charges, and dismissal of his nomination as Speaker. The Court refused to issue interim order but asked the government to correspond the details within 30 days regarding the status of earlier interim orders and the investigation into the murder of Arjun Bahadur Lama. There has been no development in the execution of the judgment till date, with the Nepal Police presumable still unable and unwilling to 'locate' the Speaker of Parliament.

Amidst the raging impunity in Nepal, where due process and human rights values are being flouted by the political class, and the concerns of conflict victims have been brutally sidelined, we are forced to reach out to the IPU and the Spanish Government for establishing accountability for the war crimes and crime against humanity as they apply to the Speaker of the Nepali Parliament, Agni Prasad Sapkota.

As a global organisation of 179 parliament bodies, and dedicated to rule of law, due process and human rights, the Union must respond to this request from Nepal. The IPU's commitment as clear from its slogan 'For Democracy, For Everyone' means first and foremost commitment to human rights and rule of law.

We request the Government of Spain to comply with the letter and spirit of Spain's obligations under Universal Jurisdiction, which it has committed itself to apply. Thus, we ask the IPU and the Spanish Government to urgently communicate to the office of the Speaker of the Nepal Parliament its inability to allow him entry into the country and its obligations to open investigation against him under the principles of Universal Jurisdiction should he enter Spanish jurisdiction.

Sincerely,



Charan Prasai
Coordinator, Accountability Watch Committee

Endorsed by:

1. Advocacy Forum-Nepal (AF)
2. Amnesty International Nepal
3. Bandurmudhe Ghatana Pidit Samiti

4. Conflict Victim Women National Network (CVWN)
5. Conflict Victims Common Platform (CVCP)
6. Conflict Victims National Alliance (CVNA)
7. Conflict Victims Orphans Society (CVOS)
8. Conflict Victims Society for Justice (CVSJ)
9. Conflict Victims' Rights Forum, Myagdi
10. Democratic Freedom and Human Rights Institute (DFHRI)
11. Ganesh Ujjan Foundation
12. Human Rights and Justice Centre (HRJC)
13. Human Rights for Justice
14. Human Rights Organizations Nepal (HURON)
15. Informal Sector Service Centre (INSEC)
16. Legal Aid and Consultancy Centre Nepal (LACC)
17. Maina Bal Bikash Samiti
18. Nagarik Aawaz (NA)
19. National Alliance of Women Human Rights Defenders
20. National Network of Disabled Conflict Victims (NNDCV)
21. Nepal Forum for Restorative Justice
22. Tarangini Foundation
23. The Story Kitchen
24. Voices of Women Media (VOW Media)

Collective Initiatives for Accountability

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